

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL GRECCO PHOTOGRAPHY, INC.,

Plaintiff,

v.

EVERETT COLLECTION, INC.,

Defendant.

Civil Action No. 07-CV-8171 (CM)

**REPLY DECLARATION OF
TOBY BUTTERFIELD**

I, TOBY BUTTERFIELD, declare and say:

1. I am a member of Cowan, DeBaets, Abrahams and Sheppard LLP, counsel for defendant ("Defendant") in the above-referenced case. I make this declaration of my own knowledge, except where otherwise indicated.

2. I submit this declaration in support of Defendant's Reply Memorandum in Support of its Motion For Summary Judgment On All Claims, which Defendant served and filed on July 1, 2008.

3. Pursuant to individual practices of Honorable Colleen McMahon, Plaintiff's opposition to Defendant's motion would be due on July 15, 2008, two weeks after the filing date of Defendant's motion, unless either the parties agree or the Court orders otherwise.

4. The docket did not reflect an extension of time requested or granted. Defendant received no response by the deadline, except an e-mail I received from Plaintiff's counsel on Friday July 11 requesting that Defendant withdraw its motion.

5. On July 17, two days after the deadline for Plaintiff to file its opposition had passed, Defendant wrote to Plaintiff's counsel reminding him that this deadline had passed and offering an extension of time with which to file its opposition. Plaintiff's counsel requested

two more weeks, so the parties agreed that Plaintiff would have until July 25 to file its opposition, and Defendant would have until August 8 to file its response. A copy of a July 18, 2008 letter to that effect, endorsed by Judge McMahon, is annexed as Exhibit A.

6. On July 25, 2008 Plaintiff served and filed its opposition, which consisted of a memorandum of law in opposition, a declaration of Michael Grecco and three exhibits.

7. The docket confirms that there was no response to Defendant's 56.1 statement. Plaintiff is in violation of Local Rule 56.1.

8. In my original declaration on this motion signed on July 1, 2008, I referenced Defendant's First Request for Production of Documents and Things and First Interrogatories, but did not attach copies thereof. They are annexed as Exhibit B.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: New York, New York
August 8, 2008



TOBY BUTTERFIELD